THE OHIO EXPERIENCE:
WHAT CAN BE DONE TO SPUR BROWNFIELD DEVELOPMENT IN AMERICA'S HEARTLAND

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Imagine that you are standing at the locked gates of an abandoned industrial site. What do you see? Economic opportunity? Or environmental contamination and financial disaster? For most, interpretation is a matter of perspective.

If you own this property—a site where manufacturing plants for decades operated unencumbered by environmental regulations—you may have to contend with "smoking guns" or "dead bodies" buried deep beneath the surface. Corporate real estate owners typically are advised by their lawyers to keep property like this under wraps, a permanent fixture in their real estate portfolios. Individual property owners take these white elephants to the grave, leaving their children to devise a solution for their final disposition.

If you are a regulator, you may view this site as a threat to human health, safety, and the environment. To you, it is a potential battleground for protracted litigation involving hordes of lawyers and technical consultants. Sites like this are exactly what motivated you to become a regulator—to save future generations from years of corporate abuse.

Are you a lender? Then you hope you weren't responsible for recommending the loan on this property. If you are the actual loan officer, you pray there was enough cash flow for a long enough period of time to pay off the note. Confronting another work-out, or worse yet, foreclosure, on a site plagued by environmental issues would do little to further your career path.

To the member of an environmental interest group, this property represents yet another example of why we need to tighten, rather than relax, environmental regulations. Who knows what environmental nightmare lurks behind those gates? Without vigilance, corporate America will continue to abuse the environment. The individual or corporation that owned this plant during its heyday probably racked up millions of dollars in profits—the former owners should be held responsible for cleaning up the mess, no matter what the cost.

If you are a neighboring homeowner, you may look at an abandoned industrial lot and reminisce about how your parent worked at that plant for thirty years. You recall the site as it was then, a thriving enterprise that supported your family and your friends' families. Or you may see it from an entirely different point of view. Today, it may look more like a potential hazard, a vacant lot where your children might encounter harm should they wander there to play.

But what if you are the mayor of the community in which that formerly productive plant has sat idle for years? Instead of problems, you may see opportunity—the opportunity to attract new business, create hundreds of new jobs, and add millions of dollars to the city's tax coffers. To you, this property embodies continuing economic development, not mere historical significance.

And finally, suppose you are a developer. Perhaps you also can see economic opportunity, but through a different lens. You believe the property could have potential, provided you could:

1. convince the corporate property owners that you can address and eliminate their environmental liabilities;
2. work your way through the maze of federal, state, and local laws and regulations governing potentially contaminated properties;
3. see eye-to-eye with the mayor's office;
4. assure regulators that the site is not a toxic time bomb;
5. appease skeptical citizens groups; and
6. prove beyond the shadow of a doubt to your lender that it is worth taking the risk to finance this project.

If you could accomplish all the above, the only remaining challenge would be to earn a sufficient rate of return to compensate you and your company for all the time, money, effort—and potential ulcers—associated with bringing such a project to fruition. So, you see, it is all a matter of perspective.

Given these many diverging viewpoints, individuals trying to create momentum for developing abandoned industrial sites, or brownfields, face a formidable task. Yet the topic of brownfields redevelopment is alive and well. The news media is writing about it. Local governments have created committees to study it. And seminars on the topic are springing up by the dozens.

What is fueling the interest in brownfields redevelopment? Economics and common sense. The brownfields issue is the anchor weighing down the ship of today's urban redevelopment movement. Although this certainly oversimplifies the problem, the fact remains that the redevelopment of brownfields must be regarded as an integral component of successful urban redevelopment; yet the numerous and complex issues associated with brownfields redevelopment are so daunting that they discourage otherwise interested parties.

Brownfields redevelopment requires extensive knowledge of the law, environmental assessment and remediation, finance, real estate, insurance, and economic development. Congress, however, should take all actions within its power to clarify liability issues and create more attractive and sustainable financial incentives to encourage investment in brownfield redevelopment.

WHAT IS A BROWNFIELD?

The United States Environmental Protection Agency (USEPA) Region 5 defines brownfields as "abandoned, idled or underused industrial and commercial sites where expansion or redevelopment is complicated by real or perceived environmental contamination that can add cost, time or uncertainty to a redevelopment project." [1] The United States Office of Technology Assessment (OTA) provides a similar, albeit broader, definition. The OTA definition of a brownfield includes a site whose redevelopment may be hindered not only by potential contamination, but also by poor location, old or obsolete infrastructure, or other less tangible factors often linked to neighborhood decline.[2]

Brownfields routinely are associated with distressed urban areas, particularly central cities and inner suburbs that once were heavily industrialized, but since have been vacated. A brownfield may be as small as an abandoned gas station on a one-acre plot or as expansive as a steel-manufacturing operation sprawled out over several hundred acres. Brownfields sometimes are defined as the opposite of "greenfields" —property that has not previously been used for commercial or industrial activities and thus is presumed free of contamination.

Brownfields sites may be divided into four categories:

1. sites that—despite needed remediation—remain economically viable, due to sufficient market demand;
2. sites that have some development potential, provided financial assistance or other incentives are available;
3. sites that have extremely limited market potential even after remediation; and
4. currently operating sites that are in danger of becoming brownfields because historical contamination will ultimately discourage new investment and lending.[3]

Thus, from the developer's perspective, the focus of real estate professionals, corporations, government authorities, and other stakeholders should be on brownfields that are viable for economic development. "Viable brownfields" are defined as underutilized properties with actual or perceived environmental liabilities that, due to their inherently positive market attributes, may be economically redeveloped into productive assets. Properties that cannot be characterized in this manner are the least likely to be redeveloped with private resources and are the most likely to require either significant public subsidies or intervention to spur redevelopment efforts.

Although a small percentage of brownfields sites may have high contamination levels and be candidates for addition to the list of most heavily contaminated sites identified in the nation, the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), or similar state priority lists, a large number of brownfields sites will likely never be listed. These sites will not be listed because (1) they have much lower contamination levels, or (2) the environmental condition of these sites will not be evaluated. Abandoned or underutilized industrial and commercial properties with no actual contamination also may suffer from the "brownfields stigma" until a site assessment proves the property is clean. Little information about the environmental condition of many brownfields sites is currently available.

Essential to the brownfields issue is distinguishing between NPL sites—the worst known contaminated sites with little prospect for economically viable reuse—and those sites characterized by low to medium levels of environmental contamination. As of 2002, the USEPA had identified nearly 1,250 high-priority sites that pose significant risks to human health and safety. These NPL or "Superfund" sites demand monumental effort and resources to restore and manage. The balance of contaminated sites generally are easier to clean and offer greater opportunities for reuse.

WHY ARE BROWNFIELDS DEMANDING ATTENTION?

The sheer enormity of the brownfields dilemma has drawn it into the national spotlight, provoking the United States Conference of Mayors to declare the situation an emergency.[4] In 1995, there were an estimated 130,000 to 450,000 contaminated commercial and industrial sites around the country, according to the United States Government Accounting Office.[5] Currently, GAO estimates have climbed to over one million brownfield sites. No community is immune. Officials in Cook County, Illinois have identified 329 polluted industrial sites within county boundaries. A survey of Toledo, Ohio businesses found that 62 percent of the area's commercial and industrial real estate transactions are encumbered by environmental issues.[6]

Although these numbers are impressive, the real impact of brownfields is more dramatically summed up in dollars and cents. Current estimates place the cost of cleaning up the nation's brownfields at $650 billion. That is just the initial cleanup tab. Brownfields also represent millions of unrealized tax dollars and millions in lost wages.[7] Their presence contributes to reduced economic development and job creation in urban areas, particularly in central cities and older suburbs.[8]

According to a survey by the United States Conference of Mayors, 33 cities with brownfields sites conservatively estimated their cumulative annual loss of tax revenues at $121 million. Using more optimistic estimates, they projected losses at $386 million. This data suggests that more than 20,000 cities and other municipalities nationwide could be losing billions of dollars each year in local tax receipts resulting from their failure to restore brownfields to economic viability.[9]

Most of the nation's brownfields are caught in a vicious cycle of decline, which can be depicted as follows:[10]

1. A property owner, unwilling or unable to sell contaminated property, mothballs it, thus undermining the local tax base.
2. Vacant facilities deteriorate and invite arson, illegal dumping, and vandalism, including the stripping of parts and materials.
3. Unaddressed contamination may spread, further eroding the property value, escalating the cleanup cost, and threatening the economic viability of adjoining

properties.

4. Potential investors, faced with uncertain costs and legal liabilities, seek development opportunities elsewhere.
5. Brownfields sites become unwanted legal, regulatory, and financial burdens on the community and its taxpayers.

The stigmatic impacts of brownfields on communities are manifold. Potential investors, concerned about liability, shy away from developing abandoned industrial sites. Real estate buyers are reluctant to invest in brownfields, which further diminishes their value. Communities lose out on property-tax revenues. Public services become less available and area unemployment rates soar.[11] The convergence of these economic development and environmental issues comes at a critical time for local officials struggling to craft community revitalization strategies targeting older industrial areas and combat urban sprawl.

HOW DID THE BROWNFIELDS ISSUE EVOLVE TO A CRISIS STATE?

The proliferation of brownfields and the failure to address their redevelopment effectively can be traced to a number of forces, including:

1. the unintended effect of environmental laws on brownfields redevelopment;
2. enforcement policies that target lenders; and
3. ignorance of the science of contaminated property.

The Unintended Effect of Environmental Laws on Brownfields Redevelopment

Environmental laws are a relatively recent phenomenon. The most significant statutes were not enacted and actively enforced until the mid- to late 1970s. Among the most widely publicized of United States environmental laws is CERCLA, also known as the federal Superfund law. Hastily passed in 1980, in the wake of the Love Canal scare, CERCLA established a federal program to identify and remediate chemical spills and abandoned hazardous waste sites believed to pose a significant threat to human health, safety, and the environment. It created a mechanism for assessing the environmental condition of those sites and placing the worst sites on the NPL, making them eligible for federal funds.

Only about 1,250 of the nation's hundreds of thousands of hazardous waste sites are listed on the NPL. To address those sites that do not meet the NPL criteria, states have enacted their own legislation, in the form of mini-CERCLA statutes.

CERCLA, its state equivalents, and the Resource Conservation and Recovery Act (RCRA) were intended to create a comprehensible system for correcting environmental damage that occurred in the past and for preventing future contamination. Instead, applied in the brownfields context, they produced almost the opposite effect. Deciphering these laws has not been easy. Environmental lawyers themselves bemoan the thousands of pages of intricate, complex, and often contradictory requirements that many environmental programs impose. And until recently, cost/benefit analysis has not played a significant role in the development of new laws. Further, cleanup standards, costs and approaches may differ substantially due to the regulatory program applied to a contaminated property. The end result is that the confusion engendered by environmental laws has inadvertently subverted progress toward redeveloping brownfields, rather than contributing to a positive solution, as originally intended.

Targeting Deep-Pocketed Lenders

In *United States v. Fleet Factors Corp.*, the court found that a lender could be held liable under CERCLA for cleanup if the lender participated "in the financial management of a facility to a degree indicating a capacity to influence the corporation's treatment of hazardous wastes."[12] The court's ruling led other private parties and the government to target deep-pocketed lending institutions in Superfund cases, a trend that further exacerbated the brownfields problem.

Regulators, realizing that the due diligence process required for finalizing a loan would likely uncover any contamination of a property, adopted the view that lenders should act as environmental police. If they failed to uncover environmental hazards, they could become responsible for the cleanup. Lenders reacted by refusing to loan money on projects associated with even a hint of environmental liability. This practice, sometimes referred to as "greenlining," in addition to creating more brownfields, also triggered a credit crunch for industrial financing during the late 1980s and early 1990s. Thus, lessons learned by lenders through tough litigation and unsympathetic court doctrine added to the creation of brownfields. While dramatic recent changes to both CERCLA, through the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996[13] and companion state brownfield statutes have attempted to create "safe-harbors" for lenders on contaminated property, the stigma of historical enforcement practices remains difficult to overcome.

Ignorance of the Science of Contamination

The underlying fears regarding human health and the environment associated with contaminated property have been aggravated in part by a basic lack of understanding within the scientific community concerning the true risks posed by contaminated sites. The science supporting currently mandated risk goals is inconclusive and unrealistic. Yet current policy continues to be driven by inferior scientific evidence, resulting in the proliferation of brownfields and their excessive cleanup for limited returns to human health and the environment.

As an example, current regulations in many cases dictate that contaminated sites be returned to "background" or "naturally occurring" levels of hazardous substances. Such policy decisions regarding levels of "acceptable environmental risk" have little relation to the types of risks people confront daily. After all, the risk to the average commuter of being killed in a car accident is significantly greater than the risk of developing cancer from years of exposure to a mildly contaminated site.[14]

BARRIERS TO BROWNFIELDS REDEVELOPMENT

Former Cleveland Mayor Mike White has cited contamination as the number-one obstacle to urban redevelopment. In large part, the frustration of Mayor White and other officials stems from the ambiguity surrounding brownfields—ambiguity related to legal issues, cleanup standards, liability, and the unavailability of financing.

Brownfields redevelopment is not a zero-sum game. It should result in economic growth for all parties involved. However, until recently, the many barriers to brownfields redevelopment have discouraged progress. These barriers include:

1. ambiguous legal liability;
2. absence of identifiable and consistent cleanup standards;
3. lack of concentrated expertise;
4. potentially substantial capital costs;
5. insufficient financing;
6. clouded federal, state, and local environmental and legal policies;
7. entrenched attitudes among regulators;
8. absence of a consistent redevelopment framework;
9. public opposition;
10. limited demand for redeveloped sites; and
11. competition from greenfields.

Ambiguous Legal Liability

Fear and uncertainty about liability are the greatest obstacles to brownfields redevelopment. The daunting complexity, ambiguity, and overlapping nature of CERCLA and other environmental laws preclude an accurate appraisal of the actual risk of liability.[15] One court has referred to RCRA as "mind-numbing."[16] CERCLA has been called much worse.

Property owners potentially responsible for contamination of a site cannot completely shift their liability to buyers, including redevelopers. As a result, they often mothball property that might otherwise be redeveloped. And, despite the recent amendments codified in the Small Business Liability Relief and Brownfield Revitalization Act of 2002, redevelopers who might otherwise see economic promise in brownfields, still shy away from abandoned industrial sites, largely out of fear of becoming mired in Superfund's legal quagmire. While state voluntary action programs, like the Ohio Voluntary Action Program, have clarified state liability issues, these programs are still complicated and can be procedurally cumbersome.

Absence of Identifiable and Consistent Cleanup Standards

Depending on a number of factors including the date a contaminant was discovered or released, the type of contaminant and the location where the contamination occurred, different regulatory programs may apply to the cleanup process. Based on the regulatory program, the cleanup costs and time required to address the contamination may vary dramatically. The primary reasons for these differences are due not to the science of remediating the contamination, but the beauracracies created to support these regulatory programs. At the very least, uniform, risk-based remedial approaches, tailored to the properties' end-use must be adopted to increase certainty and consistently reduce costs for brownfield redevelopment.

Simply stated, a developer should not be held to different standards or processes for remediating the same contaminant of concern.

Lack of Concentrated Expertise

Key players involved in commercial and industrial site reuse—including property owners, lawyers, environmental consultants, real estate brokers and professionals, economic development representatives, insurance specialists, lenders, and regulators—have little or no experience in working collectively toward a common goal. In fact, they often engage in counterproductive behavior when it comes to brownfields redevelopment. They are only now realizing that cooperation must replace antagonism to advance each others' interests.

Potentially Substantial Capital Costs

Available data on actual brownfields cleanup costs is limited. However, the price tag can be substantial. Worse yet, potential liability issues make it difficult to determine up front what the final costs will be.

Assessment and remediation costs may range from a few thousand dollars to millions, depending on the site. A significant investment, usually for due-diligence purposes, may be required merely to estimate the anticipated cost of remediation and development. In many cases, potential due-diligence costs prohibit the assessment of smaller sites deemed unworthy of the investment.

Once developers arrive at an estimated cost for assessment and remediation, they cannot assume the cost is finite. In some cases, the process of remediation uncovers unanticipated areas of contamination, which then sends what was originally deemed an economically viable project deep into the red.

Public and private resources for brownfields assessment and remediation are limited—just one more deterrent for would-be developers. Therefore, Congress must create a viable broad-based economic incentive to make significant, measurable progress in tackling brownfield sites. Only by tapping the power of traditional capital markets will Ohio specifically, and the United States in general, encourage meaningful capital investment in brownfield development.

Insufficient Financing

The effect of environmental liabilities on lenders has been dramatic. According to one study, more than 40 percent of commercial mortgage bankers polled said they had backed out of mortgage deals on potentially contaminated properties. About 87 percent of those bankers said that fear of environmental liabilities had delayed transactions. And approximately 70 percent of the survey respondents said environmental problems actually had materialized on properties for which they had arranged mortgages.[17] Ultimately, the prospect of foreclosing on contaminated collateral in the event of default dampens lender interest in brownfields loans.[18]

Clouded Policies

Historically, federal, state, and local policies have done little to spur industrial redevelopment. Rehabilitation tax credits offered during the mid-1970s provided incentives to invest in real estate and redevelopment. These tax incentives helped stem the exodus of businesses from long-established neighborhoods and made reuse more economically attractive. However, these tax advantages effectively vanished under the 1986 tax code revisions limiting passive losses. As a result, investors turned to potentially more lucrative sources of return, such as Wall Street, and many rehabilitation projects failed to materialize.[19] Limited tax relief, allowing current deductibility or remedial costs, offers little incentive to would be brownfields redevelopers or property owners. Further, the utility of federal tax credits for brownfield redevelopment to date has not been meaningful due to significant limitations placed in federal programs. Therefore, any proposed tax credit program should not only be limited only to the most distressed urban areas, as significant brownfields are a problem in every community; the tax credits should be freely transferable; and the tax credits should provide a substantial enough incentive to encourage investment in complex transactions.

Entrenched Attitudes Among Regulators

The latest trend at the legislative level has been to adopt a more user-friendly approach to redeveloping brownfields sites, including attempts to be more flexible and creative in addressing historical environmental liabilities. Yet despite these efforts, significant differences of opinion and philosophy concerning redevelopment, environmental risk, and liability persist within state and federal environmental regulatory agencies. In many instances, the belief that the polluter must pay continues to reign supreme. This lack of regulatory flexibility is a hidden killer of many brownfield transactions.

Absence of a Consistent Redevelopment Framework

The absence of clear and coordinated federal and state guidelines for redeveloping brownfields—a deficiency closely related to ambiguous legal liability issues—has hindered redevelopment.

Meanwhile, the failure to establish local brownfields redevelopment programs presents an often overlooked barrier. Although many local politicians have elevated the brownfields issue to the crisis level within their communities, few communities or cities have taken positive, concrete steps toward implementing a meaningful brownfields redevelopment strategy. As a result, developers attempting to work their way through the maze of city programs and permitting processes frequently abandon the process out of frustration.

Public Opposition

Although certain community groups voice an interest in promoting the cleanup and redevelopment of neighborhood brownfields, their members understandably expect some assurance that remediation will adequately protect their health and the environment. Some are intent on ensuring that traditional, heavy manufacturing-type industry is replaced with nontraditional industries perceived as less harmful to the environment. Unfortunately, this often creates conflict between potential developers and community groups who want the government to ensure the environmental safety of their neighborhoods without due consideration for the costs involved. Further, identifying the true voice of the "community" remains difficult to discern.

Limited Demand for Redeveloped Sites

There is no question about the inventory of brownfields for potential redevelopment—as previously noted, there are hundreds of thousands of these sites nationwide. However, even if all these sites were identified and completely remediated, the evidence suggests there is insufficient market demand for many of these properties due to other market forces (such as poor location, high crime, decaying infrastructure, and similar matters). Therefore, it is unlikely that investors would rush in to develop a large number of these brownfields even if the liability issues were resolved.

Competition from Greenfields

Fierce competition from greenfields communities intent on attracting new development has contributed to what we refer to today as urban sprawl—the practice of building on previously undeveloped land outside the city limits. Urban sprawl is costly. It allows a city's existing roads, bridges, water lines, sewer systems, and rail spurs to go unused while similar infrastructures are duplicated elsewhere. For the community populated by numerous brownfields, billions of dollars in previous public and private investment may go to waste.

Yet many developers choose urban sprawl over brownfields redevelopment, in part because greenfields communities can offer financial incentives, such as tax abatement and low-cost financing, equal to those available from cities where brownfields predominate. To counteract this trend, communities truly interested in meaningful brownfields redevelopment must go beyond leveling the playing field—they must tilt it significantly in favor of brownfields reuse.

BRINGING DOWN THE BARRIERS

Leaping the multiple hurdles to the successful redevelopment of brownfields can be an arduous process. Nonetheless, stakeholders across the nation are attempting to do just that. State Voluntary Cleanup Programs are clearly leading the most innovative trends in this area. These programs have been designed specifically to address the obstacles to brownfields redevelopment. The goals of these programs include integrating issues involving legal liability, technical requirements, and economic incentives. Many of these programs provide technical assistance from regulators, liability assurances through covenants-not-to-sue, and financial incentives, including tax abatement, not available through other state regulatory programs.

Voluntary programs are gaining in popularity because they allow private parties to initiate cleanups and work cooperatively with state agencies, thus avoiding some of the costs and delay that would likely occur if the sites were subject to enforcement-driven programs.[20] They have set the stage for brownfields redevelopment.

FOOD FOR THOUGHT

The environmental and liability issues surrounding brownfields have had the same chilling effect on real estate developers and lenders that the movie *Jaws* has had on swimmers. We know the sharks are out there. And as is the case with certain sharks, some environmental liabilities will eat you alive. Being ripped to shreds in the jaws of a ferocious beast is a gruesome way to die. It is not unlike the experience of the unsuspecting loan officer who extends credit on property that is subsequently identified as a Superfund site, or the inexperienced developer who vows never to tackle the bureaucratic landmines associated with brownfield projects. Yet do we allow the knowledge that sharks exist intimidate us into staying out of the water? Shark experts tell us that few people actually die from shark attacks.[21]

Whether or not you decide to swim will depend on how much you know about a given situation. Are these waters typically shark-infested? If so, what kinds of sharks lurk beneath the surface? Man-eaters or those who dine on plankton? Can a steel cage be built to protect you from the jaws of death? Clearly, where you swim—or whether you swim—will depend in great part on your knowledge of both sharks and the waters in which you intend to swim. Hopefully, Congressional innovations in the area of financial incentives for brownfield redevelopment will encourage interested parties to continue diving into the waters.[22]

NOTES

1. USEPA REGION 5 OFFICE OF PUB. AFFAIRS, BASIC BROWNFIELDS FACT SHEET, (1996).
2. U.S. OTA, STATE OF THE STATES ON BROWNFIELDS: PROGRAMS FOR CLEANUP AND REUSE OF CONTAMINATED SITES, at 8 (1995) [hereinafter STATE OF THE STATES ON BROWNFIELDS].
3. *Id.*
4. U.S. Conference of Mayors, Brownfields Redevelopment Action Agenda Initial Framework (Jan. 25, 1996) [hereinafter U.S. Mayors Report].
5. U.S. GOV. ACCOUNTING OFFICE, GAO/RCED-95-172, COMMUNITY DEVELOPMENT—REUSE OF URBAN INDUSTRIAL SITES (1995).
6. Charles Bartsch, *Restoring Contaminated Industrial Sites*, 10 ISSUES SCI. & TECH., 74 (1994).
7. NORTHEAST-MIDWEST INST., COMING CLEAN FOR ECONOMIC DEVELOPMENT 1–2 (1996) [hereinafter COMING CLEAN].
8. STATE OF THE STATES ON BROWNFIELDS, *supra* note 2, at 4.
9. U.S. Mayors Report, *supra* note 4, at 1–3.
10. COMING CLEAN, supra note 7, at 1–2.
11. Steven Lerner, *Brownfields of Dreams*, AMICUS JOURNAL, Winter 1996, at 17.
12. U.S. v. Fleet Factors Corp., 901 F.2d 1550, 1557 (11th Cir. 1990), *cert. denied*, 498 U.S. 1046 (1991).
13. Public Law No. 104-208 (1996) amending CERCLA to provide safe harbors for lenders, trustees, and certain governmental authorities.
14. *See* Role of Risk Assessment in Redeveloping Brownfields Sites in *Brownfields*, infra.
15. STATE OF THE STATES ON BROWNFIELDS, *supra* note 2, at 6.
16. *See American Mining Congress v. Environmental Protection Agency*, 824 F.2d 1177, 1189 (D.C. Cir. 1987).
17. ENVIRONMENTAL WARRANTY, INC., SURVEY OF 30 TOP COMMERCIAL MORTGAGE BANKERS NATIONWIDE (1995).
18. STATE OF THE STATES ON BROWNFIELDS, *supra* note 2, at 8–9.
19. *Id.*
20. *Id*. at 13.
21. Between 1984 and 1994, sharks killed just seven people in United States waters—three each in Hawaii and California, and one in Florida. To put this number in perspective, according to certain mathematicians, the odds of being hit by lightning are 600,000 to 1; the chances of winning the Florida Lottery are 13 million to 1; and the odds of being attacked by a shark are roughly 300 million to 1. Steve D'Oliveira, *Odds Against Shark Attacks*, SUN-SENTINEL (Fort Lauderdale), Sept. 27, 1995, at 1E.
22. These written remarks were adapted, in substantial part, from Davis, Todd S., *Brownfields: A Comprehensive Guide To Redeveloping Contaminated Property* (2nd Ed. ABA 2002).

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